

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 110 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI M RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR NS DESAI for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

Date of decision: 11/03/97

ORAL JUDGEMENT(Per Soni, J.)

The appellants- original accused nos. 1 & 4 of Sessions Case No. 21/97 by this appeal have challenged the judgment and order of conviction dated 29.1.1988 passed by 2nd Jt. District Judge & Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No. 21/97 whereby the

Ld. Addl. Sessions Judge has convicted appellant no.1 under sec. 302, 324 & 337 of I.P.Code and has awarded sentence of R/I for life, R/I for 2 months and R/I for 1 month respectively and to accused no.4 under sec. 323 read with sec. 114 of the I.P.Code and has awarded sentence of R/I for one month. Appellant no.1 came to be acquitted of the offence under sec. 323 read with sec.114 and sec. 504 of I.P.Code. Sentences of appellant no.1 are ordered to run concurrently.

The facts which led the prosecution of appellants with other two (who are acquitted) are as under :-

The deceased Shankarbhai Ranchhodbhai Patel had his agricultural land on the east of agricultural land of one Chaturbhai Purshottambhai Patel. There were lemon trees grown in the agricultural land of Chaturbhai Purshottambhai Patel and the same were purchased by accused appellant no.1 and appellant no.1 and his wife (Orig. accused no.2) were taking care thereof. Appellant no.1 and his wife are ordinarily residents of Gandhinagar and have come to village Bhagat-na-Muvada, Ta : Kapadwanj as they had hired lemons field. In the morning hours of 23.2.1987, one Arvindbhai (p.w.5), son of Shankarbhai was scolded by appellant no.1 alleging that he had made a hole in the hedge of the field with a view to steal away lemon fruits. According to P.W.5, he had been there to water the plants of Ardusi from the waste water-collected near the tank near the hedge of the field. As appellant no.1 scolded him, he ran away and told his father about the same. His father told him that he need not take water as they might feel scarcity of water. Thereafter, at about 11.00 a.m. when Shankarbhai with his two sons Jayantibhai (P.W. 2) and Arvindbhai (P.W.5) and his daughter Sumitraben (P.W.7) were going home in their cart, when they reached near entrance of the field of Chaturbhai, appellant no.1 hurled a stone against said Shankarbhai who was injured and fell down from the cart. Then, appellant no.1 came with dhariya in company of his wife - original accused no.2 and assaulted said Shankarbhai. Immediately thereafter, original accused nos 3 & 4 namely Kantibhai Ishwarbhai and Jayantibhai Dhulabhai also came and they instigated accused appellant no.1 that " do not worry, my uncle is there. You assault them." Saying so, appellant no.2 (original accused no.4) assaulted witnesses with stick and original accused nos. 2 & 3 assaulted them i.e. Jayantibhai and Sumitraben with sticks and fists & kicks. As a result of injury by appellant no.1 caused to Shankarbhai, Shankarbhai died there and there.

Immediately thereafter Jayantibhai lodged complaint before the Police Officer of Antarsuba, Dist.: Kaira. While complaint of Jayantibhai was being registered, appellant no.1 reached there in a bleeding condition and he also complained against said Shankarbhai and his two sons. Police Inspector Shri Hasambhai Mirza (P.W.9) investigated into the complaint and submitted chargesheet against the present appellants and two others in the Court of JMFC, Kapadwanj. He then submitted the chargesheet against P.W.2 and P.W.5 of this case in Juvenile Court. We are not concerned at this juncture with the chargesheet submitted before the Juvenile Court. However, some point is made out by the Ld. Advocate appearing for the appellant about the same.

On the chargesheet being submitted, Ld. JMFC committed the case to the Court of Sessions where Ld. Addl. Sessions Judge, framed charge against the accused. Accused pleaded not guilty and prayed for trial. Ld. Addl. Sessions Judge, after recording necessary evidence led by the prosecution and hearing the parties, held the appellants guilty of the offences referred to herein above and acquitted original accused nos. 3 & 4. Against this order of conviction, the present appeal is filed.

Whether the deceased died homicidal death is not a matter of controversy in this appeal. We have, therefore, not discussed the evidence in this regard. The accused has died a homicidal death.

Ld. Advocate Mr. N.S. Desai has challenged the conviction on the following grounds namely (i) that the evidence of eye-witnesses is required to be rejected inasmuch as they are related witnesses, interested witnesses and partisan witnesses also; (ii) that the case advanced by the prosecution is most unnatural and improbable compared to the defence led by the appellant; (iii) that the motive is absent or is not sufficient to commit this offence. The motive alleged is making hole in the hedge and it is alleged that lemon fruits are attempted to be stolen and that water was taken without permission; (iv) that the theory of self-defence advanced by the accused appellants has not been properly appreciated, considered and the learned Judge erred in not accepting the same; and (v) that the defence is prejudiced by disposal of the present sessions case as ordinarily the cross-cases are required to be disposed of simultaneously. The cross-case wherein the appellant no.1 is the complainant was first tried before the Juvenile Court alleging that the accused there were juvenile. However, when the order of holding the accused

there as juvenile when came to be challenged before this Court by way of revision, said revision application was allowed and order holding them juvenile was set aside and it was ordered to try them as an adult accused. But before they can be tried accordingly, sessions case wherefrom the present appeal is filed, came to be disposed of. Thus, a great prejudice is caused to the appellants in their defence.

We are of the opinion that this appeal can be disposed of on the contention raised as to the self-defence. We, therefore, do not deal with other contentions raised in this appeal.

It is the case of the defence that appellant no.1 when found that P.W.5 has made a hole in the hedge with a view to stealing away lemon fruits, he was scolded. That P.W.5 then went away by hurling abuses. Thereafter when appellant no.1 and his wife were going from their field to divert water in their field, deceased Shankarbhai was going to his home in a cart with his two sons i.e. P.W.2 and P.W.5 and daughter P.W.7. When appellant saw deceased Shankarbhai in a cart, he requested Shankarbhai telling him that " I am a Ravaliya and have come all the way from Gandhinagar and why do you harrass me?" On his so saying to Shankarbhai, Shankarbhai stopped his cart and came down with a dhariya and gave a blow of dhariya on his head and it was bleeding. Then P.W.2 came and gave a blow on the fore-head by the blunt edge of dhariya and P.W.5 came with Pasiya and gave a blow on the right hand elbow and at the back. When his wife intervened to rescue him, she was also injured on head by these persons. As scuffle took place, he had also assaulted Shankar Ranchhod (deceased). After the complaint of appellant no.1 was registered, he was examined by Dr. Prakashchandra (P.W.4) and has issued certificate exh.29 which shows as many as six injuries which are as under :-

- (1) Oblique C.L.W. left forehead lateral aspect 3 cms. x 1/2 cm. x bone deep.
- (2) Oblique C.L.W. left frontal region head 8 cm x 1 cm x bone deep.
- (3) Oblique C.L.W. left parietal region head 5 cm.x 1/2 cm. x bone deep. Dry blood around wound present.
- (4) Redness and tenderness in Rt. Suprascapular region transverse 3 cm.x 1cm.

- (5) Abrasion Rt. renal angle (oblique)
1cm. x 1/2 cm. (Dry. Red.)
- (6) Abrasion back of right arm transverse
lower part 1 cm. x 1/4 cm. (Dry Red).

According to Dr. P.W. 4, the said injuries are possible by something hard and blunt substance. P.W.2 who was present in the police station giving his complaint when appellant no.1 went there to lodge his complaint, had admitted in the evidence that when appellant no.1 came to the police station, he was bleeding. Despite that, except the factum of accused appellant no.1 bleeding stated in the complaint, it is not stated as to how and why he was bleeding and what can be the reason for the same. In the evidence of P.W. 2, 5 & 7, it is not shown by any of the witnesses as to how accused appellant no.1 and accused no.2 were injured. Relying on these facts and relying on the judgment in the case of Laxmisingh v/s State of Bihar (AIR 1976 SC 2263) Ld. Advocate Mr. Desai contended that omission on the part of the prosecution to explain injuries on the person of the accused are of great importance inasmuch as the evidence consist of the persons who are close relatives of the deceased and are interested one. The non-explanation in the instant case of the injuries received by the appellant no.1 and his wife - original accused no.2 had assumed great importance on the evidentiary value of the prosecution witnesses which has resulted into infirmity in the prosecution case. He has further contended that in view of these facts, Ld. Sessions Judge was in error in brushing aside the serious infirmities in the prosecution case regarding non-explanation of the injuries sustained by the accused. He has further contended that injuries sustained by the accused cannot be said to be minor and superficial and the evidence of the prosecution witnesses cannot be said to be clear and cogent and of independent and dis-interested witnesses. Evidence of prosecution witnesses in the instant case does not outweigh the effect of omission to explain injuries on the persons of the accused. He, therefore, contended that in view of these facts, the evidence of all the witnesses ought not to have been accepted by the learned Judge and the case advanced by the defence should have been accepted.

Ld. Addl.P.P. Mr. K.P.Raval tried to salvage the situation by reading the complaint and some part of the evidence of the prosecution witnesses Nos. 2, 5 & 7. Ld. APP Mr. Raval drew our attention to the facts

stated in the complaint (free translation) " I do not know how Govindbhai Maganbhai Raval is injured. However, he was bleeding." Though it is so stated in the complaint, neither of P.W.2, P.W.5 or P.W.7 stated in the examination-in-chief that appellant no.1 and accused no.2 were injured. In the cross-examination, P.W.2 has stated that " he has no knowledge and, therefore, he has no explanation whether there were 6 injuries on the person of accused no.1 and said injuries were bleeding. I do not know that accused no.2 had injury on the head and it was bleeding. Neither my father nor my brother nor I had assaulted accused No.2." Thus, P.W. 2 has not only not given any explanation about the injuries on the persons of accused nos. 1 & 2, but has pleaded ignorance as to injuries and bleeding before the Court. P.W.5 has also not stated anything about the injuries on the person of accused nos. 1 & 2 in examination-in-chief. However, he has denied the suggestion that his brother and father had attacked accused no.1 and bet him. He has also denied that accused no.2 when intervened, was also beaten. It is also denied that when his father and brother were beating accused no.1, accused no.1 snatched away dhariya from his hand. He has also denied that to escape from the beating, accused no.1 hit Paniya to his father. He pleads ignorance as to three wounds on the head of accused no.1. He pleads ignorance about the injuries on the back of accused no.1. He pleads ignorance as to injury by dhariya on the head of accused no.2 and bleeding there from. P.W.7 has also not referred to injuries on the person of accused nos. 1 & 2 in her examination-in-chief and in the cross-examination, she has deposed that it has not so happened that I bet some one in this quarrel. I do not remember that I have stated in my statement before police that Arvind intervened to rescue and Jayantibhai (accused no.4) gave a stick blow. From the evidence of Joitabhai Motibhai (P.W.8), it is proved that P.W.2 has stated in the complaint that " I do not know how Govindbhai Maganbhai Rawal was injured at the time of this quarrel. However, he was bleeding." Thus, when it is proved by the defence that accused nos. 1 & 2 were injured during the course of scuffle and accused no.1 had as many as six injuries and accused no.2 had injury on the head, the same has not been explained by the prosecution witnesses. This suggests and makes us to lead to the conclusion that the prosecution witnesses are suppressing the genesis of the case. When the prosecution witnesses are not coming with correct genesis before the Court, it is difficult to disbelieve the case of the defence. Thus, the evidence of prosecution witnesses, in our opinion, being of related and interested witnesses, the say of the accused

renders it more probable and the case of the prosecution becomes doubtful. Thus, when the case of the accused is that in self-defence, he has injured deceased Shankar, that case becomes probable, then it is necessary to decide whether he had exceeded the right of self-defence or not.

In the instant case, there are as many as six injuries on the person of accused no.1 and two injuries on the person of accused no.2. Three injuries are on the head of accused no.1 and one injury on the head of accused no.2. From the evidence of Doctor P.W.4, it is clear that the said injuries can be by blunt side of dhariya and injury nos. 4 & 5 are also probable by Dhariya and injury no.6 is probable by a stick. Accused no.2 had CLW 4 cm. x 0.5 cm. x bone deep on the left side of the head and the said injury is possible by blunt side of dhariya. When as per the defence case, injuries on the head of accused no.1 were caused by the deceased and P.W.2 and two other injuries on the person were caused by P.W.5, when accused no.1 has gone to request the deceased as to why he is harrassing him when he had come here all the way from Gandhinagar and instead of appreciating his request, he was assaulted and his wife was also not spared. When he was assaulted with dhariya and when injuries were inflicted on the head which had not resulted to be fatal to his own fortune and realising the situation he snatched away weapon from P.W.5 and to defend himself when assaulted the deceased and others, in our opinion, injuries caused on the person of the accused can be said to be putting him in the fear of death and when by the injuries caused by him said Shankarbhai has died, it cannot be said that he has exceeded in his self-defence. This we are saying so for the reason that the prosecution witnesses has not spared even the wife of accused no.1. She is also injured on the head. Thus, when the act by the accused no.1 is committed in self-defence and in our opinion when the same is not exceeded, the case of the appellant would fall under sec.100 of I.P.Code. Sec. 100 of I.P.Code reads as under :-

"100. When the right of private defence of the body extends to causing death.-- The right of private defence of body extends, under the restrictions mentioned in the last preceeding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.- Such an assault as may reasonably cause

the apprehension that death will otherwise be the consequence of such assault;

Secondly.- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Section 97 of the Indian Penal Code provides when right of private defence arises. Sec.97 reads as under :-

"97. Right of private defence of the body and of property.-- Every person has a right, subject to the restrictions contained in sec.99, to defend-

First.-- His own body and the body of any other person, against any offence affecting the human body;

In view of above provisions of law, when appellant no.1 was assaulted with dhariya by the deceased, P.W.2 and P.W.5 and when he had as many as three injuries on the head which fortunately for him not proved to be fatal and serious and one head injury on accused no.2 and when the prosecution has not explained the said injuries, in our opinion, the case or story advanced by the defence appears to be more probable and natural and right of private defence has arisen to the appellant accused no.1 and when act if committed in exercise of right of private defence, the case is covered under sec. 100 of the I.P.Code and appellant no.1 is entitled to the benefit thereof.

So far as appellant no.4 is concerned, in view of the above discussion made about the evidence of P.W.2, P.W.5 and P.W.7, he will be entitled to the benefit of doubt.

Before we part, we would like to place on record some difficulties which arose because of incomplete paper book supplied by the appellants themselves. In an anxiety to get their appeal heard early and expeditiously, the appellants accused state before the Court at the stage of admission or thereafter that they will supply the paper book because according to them the hearing is delayed because of delay in supplying the paper book prepared by the trial Court. Under this guise, they supply paper book and it appears that accordingly paper book was supplied in the instant case also. We found that the paper book supplied was not

complete one. In our opinion, relevant and important exhibits were not supplied in the paper book namely post mortem notes, medical certificates, map of the scene of offence, charge etc. In our opinion, these are very relevant documents to appreciate the evidence. We, therefore, direct the office that whenever the paper book is supplied by the accused persons, they shall not be accepted unless it contains all the evidence which was before the trial court. When paper book is supplied by private party, the office will scrutinise the same, endorse below that paper book that it is incomplete and why and shall not place said matter on board till the paper book is completed.

In the result, appeal is allowed. Judgment and order of Id. Addl. Sessions Judge is quashed and set aside. Appellants are ordered to be set at liberty forthwith if not required in any other case.

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